

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
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	:	
v.	:	Case No. 2:18-cr-1
	:	
	:	
BRANDEN FOURNIER,	:	
	:	
	:	
Defendant.	:	

OPINION AND ORDER

Defendant Branden Fournier is charged with possession with intent to distribute fentanyl. Fournier filed a motion to suppress all evidence seized, and all fruits derived, from the search of room 116 at the Four Winds Country Motel on December 20, 2017. ECF No. 37.

For the reasons set forth below, Defendant's motion to suppress is **denied**.

Factual Background

I. The Investigation

In the fall and winter 2017, the Vermont State Police and the Federal Bureau of Investigation ("FBI") were investigating certain individuals suspected of narcotics trafficking in Vermont. In furtherance of that investigation, Special Agent Colin Simons of the FBI submitted an affidavit on December 19,

2017 in support of a search warrant to search room 116 at the Four Winds Country Motel in Manchester, Vermont. The affidavit provided the following facts. Opp. to Mot. to Suppress, ECF 42-2.

On October 28, 2017, a Confidential Informant ("CI") was interviewed by detectives from the Vermont State Police's Drug Task Force ("DTF"). ECF 42-2 at 3. The CI had one 2014 felony conviction for sale of heroin, and misdemeanor convictions for petit larceny, disorderly conduct, simple assault, and possession of marijuana. *Id.* at 4. The CI had agreed to assist the DTF in exchange for monetary compensation. *Id.*

The CI told the detectives that they had known Steven Lovely and his girlfriend, Amanda Sanderson, for about a year. *Id.* at 3. Lovely and Sanderson were known by law enforcement to be involved in the distribution of large amounts of heroin and cocaine in the Southern Vermont area. *Id.* For the preceding six months, the CI had been meeting with Lovely every few weeks to pick up heroin, which the CI would then sell in the Manchester, Vermont area. *Id.* After the CI had sold the heroin, the CI would give Lovely the money from the sales. ECF 42-2 at 3. The CI had seen Lovely with large amounts of cash and firearms. *Id.*

The CI also gave the detectives information about a friend of Lovely's who went by the name "Bovice." *Id.* at 4. Bovice was later identified as Jonathan Resto. *Id.* The CI told detectives

that Resto would also get drugs from Lovely and that, at the time of the interview, Resto was currently on his way to see Lovely to pick up drugs to bring back to the Manchester area. *Id.* At the time of the interview, Lovely was presumed by law enforcement to be dead. *Id.* Special Agent Simons's affidavit emphasizes that "the detectives did not tell the CI that Lovely was presumed to be deceased at the time of the interview." ECF No. 42-2 at 4.

After the October 28 interview, the DTF executed five controlled purchases of heroin with the assistance of the CI.

The first controlled purchase occurred on November 14, 2017. *Id.* The CI contacted Resto via text messages and Facebook to arrange the buy. *Id.* A DTF detective was present with the CI while the CI was communicating with Resto. *Id.* at 4-5. Immediately prior to the controlled purchase, DTF detectives searched the CI and outfitted the CI with an audio recording device. *Id.* at 5. The CI was observed by DTF detectives from the time the CI was outfitted with the recording device until the CI drove to the location of the controlled buy. ECF 42-2 at 5. The CI purchased one "brick" (the equivalent of 50 bags) of heroin with the \$300 that the detectives had given them. *Id.*

The second controlled purchase also occurred on November 14, 2017. *Id.* The CI returned to the same place and again purchased one brick of heroin from Resto for \$300. *Id.* The same

observation and recording procedures were used as in the first controlled buy. *Id.*

Both of these purchases had occurred at the Chalet Motel Annex in Manchester, Vermont. The CI reported that another person going by the name of "Ant" was also spending time with Resto at the Chalet Motel Annex. The CI suspected that Ant was also involved in the drug trade.

The third controlled purchase occurred on November 21, 2017. ECF 42-2 at 6. The CI contacted Resto via text message and arranged to meet him again at the Chalet Motel Annex. *Id.* Immediately before the purchase, DTF detectives searched the CI and outfitted them with an audio/video recording device. *Id.* The detectives gave the CI \$300 which the CI used to purchase 50 bags of heroin. *Id.* After the controlled buy, the detectives reviewed the video footage and were able to identify "Ant" as Anthony Casiano. *Id.*

The fourth controlled purchase occurred on November 27, 2017, again at the Chalet Motel Annex. *Id.* at 7. The CI was again searched and outfitted with an audio recording device. ECF 42-2 at 7. The CI purchased 50 bags of heroin from Casiano for \$300. *Id.* Resto was also present, but was sleeping or passed out in one of the beds. *Id.* at 8.

Special Agent Simons's affidavit also outlines that the CI gave false information to law enforcement one time. On December

14, 2017, officers from the Manchester Police Department stopped a vehicle occupied by the CI and Casiano. *Id.* at 8. The next day, a detective asked the CI if they had recently been pulled over with "Ant" in the car. *Id.* The CI told the detective that Casiano wasn't Ant, but another one of Resto's friends from Massachusetts. *Id.* The CI told detectives that Casiano was not involved in drug dealing, but was only visiting. Once Casiano had seen the drug operation in the hotel room in Manchester, Casiano became uncomfortable and wanted to leave. ECF 42-2 at 8. When the CI and Casiano were pulled over, the CI was bringing Casiano back home to Massachusetts. *Id.* Four days later, on December 19, two DTF detectives confronted the CI about the identity of "Ant" and the CI admitted that "Ant" was in fact Casiano. *Id.* at 10. The CI explained that they had a sexual relationship with Casiano and that Casiano had been the person from whom the CI had purchased heroin during the fourth controlled buy. *Id.*

During the days between the CI being pulled over with Casiano, and the CI revealing that they had given police false information, the CI continued to provide details about Resto's and Ant's whereabouts.

The fifth and final controlled purchase happened on December 19, 2017. *Id.* This purchase occurred in room 116 at the Four Winds Country Motel in Manchester, Vermont. *Id.* Prior to

the purchase, the CI was searched and outfitted with an audio/video recording device. ECF 42-2 at 10. The CI was under constant surveillance as they traveled to and from the Four Winds Country Motel. *Id.* The CI told detectives they purchased 50 bags of heroin/fentanyl from Casiano for \$300. *Id.* The substance purchased by the CI field tested positive for heroin. *Id.* DTF detectives reviewed the video footage from the CI and identified Casiano and Resto as the two men who sold the CI heroin. *Id.*

II. The Search Warrant and Current Motion to Suppress

On December 19, 2017, FBI Special Agent Colin Simons applied for a warrant to search room 116 at the Four Winds Country Motel. The fifth controlled buy had happened earlier that day. Based on this information, Magistrate Judge Conroy issued a warrant authorizing the search of room 116. ECF 42-1.

FBI agents executed the warrant the next morning, on December 20, 2017. The room contained large amounts of heroin, along with cocaine and several cell phones. During the search, agents arrested Fournier, as well as Casiano, and Resto.

On January 3, 2018, a Grand Jury in Rutland, Vermont returned an indictment charging all three men with possession with intent to distribute fentanyl in violation of 21 U.S.C. § 841(a)(1) and 18 § U.S.C. 2. ECF 42 at 4.

On May 7, 2018, Fournier brought a motion to suppress all evidence obtained pursuant to the search of room 116 at the Four Winds Country Motel on the grounds that the affidavit submitted in support of the warrant misrepresented and omitted material information. He argues that "through the omission of certain facts and the misleading presentation of others," the affidavit created a false impression of the CI and "that false impression formed the basis of the magistrate's assessment of [the CI's] credibility." Mot. to Suppress, ECF No. 39 at 3.

Fournier challenges three main inaccuracies and omissions in the underlying warrant affidavit. First, Fournier claims that Paragraph 8 of Simons's affidavit presents the CI as someone who worked for Steven Lovely, when in reality the CI was an "independent retailer of heroin in the Manchester area for whom Lovely was a wholesaler who extended credit." *Id.* at 1. According to Fournier, the CI was in debt to Lovely "and, as a consequence thereof, no longer able to operate independently." *Id.* at 3. Fournier adds that "the 'monetary compensation' [the CI] hoped to derive from her cooperation was largely in the form of debt relief and recovering control of her operation." *Id.* at 1-2.

Second, Fournier points to Paragraph 9 of Simons's affidavit, which describes Resto ("Bovice") as a friend of Lovely "who was, at that very moment on October 28th, en route

to Lovely's residence." *Id.* at 1. Fournier states that, in reality, Resto "knew, on October 28th, that Lovely's residence had burned with two bodies in it" and that Resto "certainly was not on his way there to supplement their inventory." *Id.* at 2. Additionally, Fournier attacks the affidavit for not explaining "why the CI would have known of [Resto]'s plans" or that "Bovice was the agent of [the CI's] creditor, with whom she had been collaborating." *Id.* at 2-3.

Third, Fournier highlights the fact that "the affiant note[d] that the CI was not informed of Lovely's death." *Id.* at 1. The affidavit did not explain "whether the detectives had tried to determine if the CI already knew of Lovely's demise." *Id.* at 2.

Fournier did not attach any affidavits or supporting materials.

The Government contends that the alleged inaccuracies are not material, that Fournier had offered no proof to support his allegations, and that there is "no suggestion that agents acted other than in good faith reliance on the issuance of the search warrant." Opp'n to Mot. to Suppress, ECF No. 42 at 11.

Discussion

"Ordinarily, a search or seizure pursuant to a warrant is presumed valid." *United States v. Awadallah*, 349 F.3d 42, 64 (2d Cir. 2003). However, in certain circumstances, "a defendant may

challenge the truthfulness of factual statements made in the affidavit, and thereby undermine the validity of the warrant and the resulting search or seizure." *Id.* In *Franks v. Delaware*, the Supreme Court held that a defendant may be entitled to a hearing to test the veracity of the affiant's statements. *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978).

"The *Franks* standard is a high one." *Rivera v. United States*, 928 F.2d 592, 604 (2d Cir. 1991). To obtain a hearing, a defendant must make a "substantial preliminary showing" that: "(1) the claimed inaccuracies or omissions are the result of the affiant's deliberate falsehood or reckless disregard for the truth; and (2) the alleged falsehoods or omissions were necessary to the issuing judge's probable cause or necessity finding." *United States v. Rajaratnam*, 719 F.3d 139, 146 (2d Cir. 2013) (alteration omitted) (quoting *United States v. Canfield*, 212 F.3d 713, 717-18 (2d Cir. 2000)).

A "substantial preliminary showing" means "more than conclusory" statements: the challenger's attack "must be accompanied by an offer of proof." *Franks*, 438 U.S. at 171. "Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained." *Id.*

Fournier listed three alleged main inaccuracies and omissions in support of his motion to suppress, but offered no

evidence in support of his claim that these inaccuracies were made deliberately or with a reckless disregard for the truth.

First, Fournier claims that the affidavit misleadingly presents the CI as someone who worked for Steven Lovely, when in reality the CI was an "independent retailer of heroin." Mot. to Suppress, ECF No. 39 at 1. But the affidavit simply stated that, for about six or seven months, "the CI met with Lovely directly to get large quantities of drugs from him which the CI would then distribute in the Manchester, Vermont area . . . and then return the money to [Lovely]." ECF No. 42-2 at 1. Even if this description could be labeled as inaccurate, there is no evidence that the police characterized this business relationship with a reckless disregard for the truth.

Second, Fournier asserts that, contrary to what was described in the affidavit, Resto "knew, on October 28th, that Lovely's residence had burned with two bodies in it" and that Resto "certainly was not on his way there to supplement their inventory." Mot. to Suppress, ECF No. 39 at 2. Again, Fournier did not offer any evidence indicating either that (1) the CI's statement was incorrect, or (2) the police were aware that this was an incorrect statement.

Third, Fournier argues that "[i]t is difficult to believe that the detectives did not inform the CI of Lovely's death or attempt to determine if she already knew about it." Mot. to

Suppress, 3. Again, there are no affidavits or evidence of any kind given in support of this conjecture.

Additionally, the affidavit's alleged inaccuracies are not material. As the Second Circuit has explained, "[i]f the untainted portions of the application are sufficient to support the probable cause or necessity findings, then the misstatements are not 'material' and suppression is not required." *Rajaratnam*, 719 F.3d at 146. "An informant's participation in supervised drug purchases is powerful corroborative evidence for purposes of determining probable cause." *United States v. Wagner*, 989 F.2d 69, 73 (2d Cir. 1993); see also *United States v. McKinney*, 143 F.3d 325, 329 (7th Cir. 1998) ("Controlled buys add great weight to an informant's tip."). Indeed, the First Circuit has found that even where an affidavit contains no information regarding an informant's reliability, it may still establish probable cause if a law enforcement officer "confirmed the information with which the confidential informant provided him [or her] by carrying out a carefully-executed 'controlled buy.'" *United States v. Garcia*, 983 F.2d 1160, 1167 (1st Cir. 1993). Even assuming, arguendo, that Fournier's asserted inaccuracies were proven, the affidavit still describes five recorded, heavily-surveilled, controlled purchases executed by the CI. The last controlled purchase occurred the day the affidavit was written and in the room for which the application sought a

search warrant. These purchases establish a high probability that there would be evidence of drug distribution in room 116, and would have been sufficient to support the magistrate judge's finding of probable cause.

Conclusion

For the reasons set forth above, Defendant's motion to suppress is **denied**. A *Franks* hearing is unnecessary.

DATED at Burlington, in the District of Vermont, this 17th day of December, 2018.

/s/ William K. Sessions III
William K. Sessions III
District Court Judge